GANESWARY D/O PONNUDURAI

V.

PRISMATIC SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
TUAN T. SELVENTHIRANATHAN JC
[COMPANIES (WINDING-UP) D1-28-16-92]
6 DECEMBER 1993

COMPANY LAW: Winding-up petition - Relevant section of Companies Act under which petition was presented not stated - Whether fatal -Whether specification of section required by law.

COMPANY LAW: Winding-up petition - Affidavit in support - Affidavit not in prescribed form - Whether petition rendered incompetent - Rule 26 Companies (Winding-Up) Rules 1972 - Whether to be strictly complied with.

COMPANY LAW: Winding-up - Petition by shareholder of company - Petitioner pleaded just and equitable ground but alleged oppressive behaviour of the other shareholder - Whether petition a hybrid petition - Company owned by two 50% shareholders - Whether petition under s. 181 could be presented - Companies Act 1965 ss 181, 218.

This was an application by one Dr. Ramachandran to set aside an *ex-parte* order for injunctive relief which the petitioner, Ganeswary d/o Ponnudurai, in the course of presenting her petition to wind-up the respondent, had obtained against him. The petitioner was one of two shareholders in the respondent (the company) holding 50% of the shares therein. Dr. Ramachandran was the other shareholder and the man managing the affairs of the company. The petitioner was dissatisfied with the way Dr. Ramachandran was running the company and hence, presented a petition under the Companies Act for its winding-up, stating that it was just and equitable to do so. In presenting her petition thus, the petitioner, however, did not specify the section of the Companies Act under which the petition was presented. The facts also showed that due to the need to accommodate the full facts of her allegations against Dr. Ramachandran, the petitioner had to modify the form of her affidavit, such that the affidavit had not strictly followed the form prescribed in the Companies (Winding-Up) Rules 1972.

In her petition, apart from alleging that she had been completely shut off from the management of the company by Dr. Ramachandran, the petitioner had also pleaded facts which pointed to the latter conducting the affairs of the company in an oppressive manner. And by the same petition she also prayed for injunctive relief to restrain Dr. Ramachandran, *inter alia*, from dealing with the assets of the company and to make available to her the company's records and documents.

On 11 January 1992 the petitioner obtained an *ex-parte* order in respect of the injunctive relief aforesaid and some two weeks later, on 24 January 1992, a notice of motion to set aside the *ex-parte* order was filed by Dr. Ramachandran. Before the High Court, the primary issues that arose were:

(1) Whether the deviation in form of the petitioner's affidavits herein, in the circumstances, was fatal to the petition, and hence to the *ex-parte* order of 11 January 1992.

(2) Whether the petition, by alleging that Dr.Ramachandran was acting in an oppressive manner, was a petition under s. 181 of the Companies Act, and if so, whether it was competent for the petitioner to present such petition.

(3) Whether the petition, by alleging that Dr. Ramachandran was acting in an oppressive manner as well as in a manner unfair to her interests as a shareholder, was a hybrid petition, and if so, whether the *ex-parte* order, on that ground, ought to be dissolved.

Held:

[1] The affidavits of Dr. Ramachandran did not in the slightest appreciable measure meet the substantive allegations by the petitioner in her affidavit of mismanagement of the company and her exclusion from involvement in its affairs. The contention of the petitioner that she was indeed a 50% shareholder of the company, likewise, had not anywhere been refuted. In the circumstances the Court found no reason whatsoever to set aside and dissolve the *ex-parte* order obtained by the petitioner.

[2] A comparison of the petitioner's affidavit with Form 7 in the Rules showed that the objection to the propriety of the form of the petitioner's affidavit was without basis. The affidavit complied substantially with rule 26 and Form 7 of the Rules. The deviation in form if any was necessitated by the need to accommodate the facts of the case and was clearly not calculated to mislead.

[3] The petition in the present case is not a hybrid petition. Although the various complaints directed against Dr. Ramachandran and the other directors of the company could constitute oppressive behaviour within the meaning of s. 181(1)(a) of the Act, the complaints *prima facie* showed that Dr. Ramachandran and the other directors had acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, and did appear to be unfair or unjust to the petitioner as another member of the company.

[4] Form 2, that is the format of the petition in the Rules, does not require the petitioner to state categorically under which specific provision of the Act the winding-up of the company is sought. This being the case the pleading herein, in relation to the main prayer sought by the petition, was not defective by reason of its failure to specify the section of the Act under which it was purported to be brought.

[5] A petition for winding-up a company cannot be presented under s. 181 of the Act where there are only two shareholders holding 50% of the shares each, as in the present case, notwithstanding that the facts of the case show that one 50% shareholder is acting in an oppressive manner *vis-a-vis* the other. The oppression in s. 181, in law, must mean the oppression or unfair discrimination of, or other prejudicial action against, the minority shareholders by the majority. Such a petition must of necessity in law be presented under s. 218 of the Act. In the circumstances it would be open to the petitioner in the present case to amend the averments in the petition to reflect that position in law.

[6] In so far as the other prayers for interlocutory injunctive relief were concerned, they need not have been included in the petition itself but such inclusion is not fatal. When the *ex-parte* order of Court of 11 January 1992 was obtained, these prayers in the petition for interlocutory relief were granted, leaving only the main prayer seeking the winding up of the company under the provisions of the Act. The petition therefore was not incompetent.

[7] The correspondence between the petitioner and Dr Ramachandran, made it clear beyond preadventure that Dr Ramachandran, purportedly acting as chairman of the company, was refusing the reasonable request of the petitioner as a 50% shareholder thereof, not only to convene an extraordinary general meeting but also to make the accounts and other records of the company available. The petitioner was therefore justified in seeking the interlocutory injunctive relief which she obtained by the *ex-parte* order. The facts showed that she was left with no choice but to initiate these proceedings in the face of the intransingent attitude of Dr. Ramachandran and her inability to obtain access to the affairs of the company despite her numerous requests and attempts. The facts also showed that there was no delay on the part of the petitioner in bringing these proceedings.

[Application dismissed].

Cases referred to:
Lai Kim Loi v. Dato Lai Fook Kim & Anors. [1989] 2 MLJ 290 ***(refd)***
Permodalan MBf Sdn. Bhd. & Ors. v. Emtex Corpn. Bhd. & Ors. [1988] 1 SCR 409 ***(refd)***

Legislation referred to:
Companies Act 1965, ss. 181(1)(a), 218, 221(2)(b)
Companies (Winding-Up) Rules 1972, rr. 3, 7, 26
Interpretation Acts 1948 and 1967, s. 62

For the petitioner - M. Kayveas; M/s. M. Kayveas
For Dr. Ramachandran - Harpal Singh; M/s. A.J. Ariffin, Chong & Harpal

JUDGMENT

T. Selventhiranathan JC:

The petitioner, Ganeswary d/o Ponnudurai, presented this petition [enclosure (1)] for the winding up of the respondent company, Prismatic Sdn. Bhd. ("Prismatic" or "the company"), under the provisions of the Companies Act 1965 ("the Act") on the ground that it was just and equitable to do so. She stated that she was and is a 50% shareholder in the company with the other 50% of the shares being held by one Dr. R. Ramachandran but that she was excluded totally from involvement in the affairs of the company despite her status as an equal owner of the company with Dr. Ramachandran.

The petitioner alleged that Prismatic was initially bought over as a shelf company by one R. Mathimugan, a brother of Dr. Ramachandran, sometime in 1983. It was agreed between Mathimugan and one Nagalingam s/o Subramaniam, the petitioner's husband, *inter alia* that:

(a) Prismatic would be an investment and holding company for Mathimugan and the family of Nagalingam;

(b) both sides would have equal shares in Prismatic;

(c) both sides would be on the board of directors of Prismatic;

(d) control and management of Prismatic would be on a joint and consultative basis;

(e) Nagalingam was to arrange for the family properties of the petitioner to be used as collateral to obtain loans to be advanced and/or lent to Prismatic for its investments and Prismatic was to service the interest and settle the loans so obtained;

(f) Mathimugan would bring his assets into Prismatic.

Pursuant to this pre-incorporation agreement, two family properties of the petitioner were charged to raise funds to lend to the company. Substantial amounts were also advanced as loans to the company by Nagalingam and the petitioner's brother, one Jeyasingam s/o Ponnudurai, pursuant to the understanding that the company would service the interest and settle the loans so that, the properties arranged as collateral would be redeemed and be free from encumbrances. A house belonging to Mathimugan was transferred to the company and the sale consideration was paid in part and the balance was treated as a debt by the Company to Mathimugan's wife at Mathimugan's request. Certain quoted shares owned by Mathimugan were brought into the books of the company as its assets.

The company also made the following investments:

(a) the purchase of 90,000 ordinary shares of RM1 each in Inmed Sdn. Bhd. ("Inmed") for RM90,000 in 1985;

(b) the acquisition of 600,000 redeemable preference shares in Inmed at RM600,000 in 1985 carrying with it fixed interest payment at the rate of 12% per annum payable annually by Inmed to the company and redeemable by Inmed in early January 1992 by payment of RM600,000 to the company together with interest due from 1991 amounting to RM72,000;

(c) the purchase of two units of 4 $^{1}/_{2}$ storey shop houses at a price of RM1.2 million;

(d) the company agreed to purchase one condominium unit in 1986 in a scheme known as Tivoli Villas for which a deposit of RM25,000 was paid and subsequently forfeits for non-payment of the balance of the purchase price by the company;

(e) the purchase of a flat for RM85,000 in 1985.

In addition to the loans obtained through Nagalingam and Jeyasingam, the company had also obtained loans from financial institutions and certain individuals for its investments and businesses.

The petitioner alleged that Dr. Ramachandran held the shares in the company as a nominee of Mathimugan. At the time of the formation of the company, Mathimugan was Nagalingam's superior officer in the organisation in which they were both employed and was in a dominant position *vis-a-vis* Nagalingam. The petitioner and Nagalingam also trusted Mathimugan explicitly. It was further alleged that Mathimugan left Malaysia sometime in March or April 1987 for Australia where he is still believed to be residing with no intention of returning to Malaysia. Prior to his departure to Australia, Mathimugan had assured the petitioner and Nagalingam that Dr. Ramachandran would adhere to the original understanding between Mathimugan and Nagalingam and would act for the bene fit and in the interest of the petitioner. He had also assured them that the dividends and fixed interest payments received from Inmed would be utilised to service the interest for the loans which had, been obtained for the company by charging the petitioner's two family properties and that when the Inmed shares were sold by the company and/or the redeemable preference shares were redeemed by Inmed, the proceeds would be utilised by the company to settle the loans and redeem the two properties.

It was also averred that the petitioner had allowed Nagalingam to represent her on matters pertaining to the company. Although all decisions were to be made for the company by Mathimugan in consultation with Nagalingam, in actual fact Mathimugan

made the decisions until his departure for Australia and Nagalingam accepted and followed the decisions blindly and without question because of Mathimugan's dominance and influence over him and the trust and confidence placed in Mathimugan by Nagalingam as well as by Joyasingam and the petitioner herself. There were hardly any formal or proper meetings of the board of directors of the company. Decisions which were required to be made formally by the board and shown as its resolutions were made by circular resolutions or "paper meetings" after Mathimugan made the decisions. The petitioner had signed the documents given to her in good faith.

The petitioner also complained that she and her representatives were increasingly left out from the management of the company and replaced by members of the family of Mathimugan and Dr. Ramachandran. The petitioner herself was purportedly removed as a director of the company at a meeting of the board of directors, of which meeting she was not informed. The secretary of the company, one G. Paramalingam, was replaced in August 1989 by one Vincent Paul at the instance of Dr. Ramachandran and the registered office of the company was changed to Vincent Paul's office. By letter dated 6 July 1991 the petitioner was informed by Dr. Ramachandran of a further change in the registered office of the company. At the time of the presentation of this petition the petitioner did not know if Vincent Paul continued to bo the secretary of the company or whether some other person had replaced him.

The petitioner then set out at length details of the systematic exclusion of the petitioner from having say in the affairs of the company, of the mismanagement of the company, and the failure to hold annual general meetings from the financial year 1987 onwards. Her attempts to obtain the records and accounts of the company had been rebuffed and thwarted at over turn. Her various requests to hold an extraordinary general meeting of the company were also refused [see paragraphs 16 to 37 of the petition at enclosure (1)]. Shares and other assets belonging to the company had been sold without approval by shareholders' meeting and not accounted for. The whole petition was peppered with details of high-handed actions by Dr. Ramachandran and the board of directors constituted from members of his family.

The petitioner averred that the various actions by Dr. Ramachandran and/or the directors appointed at his instance were:

(i) a cunning and pre-planned scheme by Dr. Ramachandran to usurp control of the company by for himself;

(ii) to keep the petitioner and/or her nominee/appointee out of the management of the business of the company and to prevent the petitioner from knowing about the financial affairs of the company and how its funds were being utilised;

(iii) to deny and deprive the petitioner of her financial entitlements and cause damage and financial loss to her;

(iv) to deny and deprive the petitioner of her rights and entitlements;

(v) to control and manage the affairs and finances of the company on his own for his sole bone fit and/or that of Mathimugan to the detriment of the petitioner shareholder; (vi) to frustrate the petitioner and render meaningless and valueless her 50% ownership of the company;

(vii) to subject the petitioner's family properties to foreclosure action and cause loss and damage,

The petitioner averred further that although she owned and owns 50% of the total paid-up capital of the company, yet -

(i) Dr. Ramachandran and the other directors of the company had been and were conducting the affairs of the company in a manner (which was) unjust and unfair to the petitioner and/or in disregard of statutory requirements and obligations and/ or in a manner oppressive to the petitioner and/or in disregard of her interests;

(ii) Dr. Ramachandran, acting on his own or in concert with the other directors, had bla-tantly frustrated the reasonable requests and rights of the petitioner;

(iii) Ramachandran and the other directors would continue to so act as long as Dr. Ramachandran remained a director and 50% shareholder and/or if Dr. Ramachandran controlled or was in a position to control the board and the other directors and the affair, business and finances of the company.

The petitioner therefore submitted that it would be just and equitable to wind up the company in the circumstances, and prayed for the following orders:

(i) that the company be wound up under the provisions of the act;

(ii) that an interlocutory injunction be granted restraining the company by itself and/ or by its directors, agents or servants from:

(a) making any decision or decisions pertaining to the company and carrying out such decision or decisions without the prior approval and concurrence of the petitioner;

(b) dealing with or disposing of any assets and investments of the company without the prior approval and concurrence of the petition or;

(c) paying out or dealing with any monies or funds of the company to any person or body without the prior approval and concurrent of the petitioner;

(iii) that the company and/or Dr. Ramachandran do forthwith make available to the petitioner and/or her agents all records and documents of the company including~ the statement of accounts, statement of receipt and expendi-ture, profit and loss statement and balance-sheet for the year 1987 and thereafter and permit the petitioner and/or her agents to make copies of the same.

On the 11 January 1992, the petitioner made an *ex-parte* application by way of summons in chambers [enclosure (3)] and obtained an order from the judge of the court seised of the matter in terms of the interlo-cutory injunction adverted to above.

The *ex-parte* application was supported by the affidavit of the petitioner [enclosure (2)] which reiterated substantially the various averments in the petition. The petitioner was particularly concerned with the purported dissipation of the assets of the company. Two properties of the company had been sold ostensibly at a loss but no accounts were rendered. The RM90,000 ordinary shares which the company held in Inmod had been sold for RM90,0,000 but again no accounts wore rendered, Inmed was on the verge of redeeming its RM600,000 redeemable preference shares for RM600,000 with payment of interest of RM72,000 for 1991, and she was concerned that this would be dissipated. The various sales had taken place without her consent and other decisions had also been so made. There was a real and imminent danger that the remaining assets of the company would be siphoned off and her 50% ownership of the company would come to nothing.

On the 24 January 1992 Dr. Ramachandran, in his capacity as a contributory shareholder and a director of the company, filed notice of intention to appear at the hearing of the petition, and he also filed a notice of motion [enclosure (12)] to set aside and dissolve the *ex-parte* order obtained on the 11 January 1992 and for an enquiry to be directed as to damages. This notice of motion to set aside the *ex-parte* order was set down for hearing on the 12 March 1992. It was supported by his affidavit [enclosure (11)] in which he averred as follows:

1. I am presently the managing director and a shareholder of Prismatic Sdn Bhd ("Prismatic"), I am the holder of 75,000 shares of RM1,00 each in Prismatic which is equivalent to nearly 50% of the present issued and paid-up capital of Prismatic.

2. Save and except where the contrary is stated, the facts deposed to herein are partly within my personal knowledge and partly gathered from documents and/or records within my possession and/or made available to me.

3. I affirm this affidavit in support of an application to set aside the, *ex-parte* order of court made on the 11 January 1992 on the application of Ganeswary d/o Ponnudurai ("Ganeswary"), the petitioner in these proceedings.

4. At present instructions are being given to my solicitors who are in the process of finalising a substantive affidavit in answer to the various allegations made by Ganeswary.

5. Having regard to all the circumstances of the case I respectfully state that the aforesaid *ex-parte* order of court ought not to have (been) made and that Ganeswary has not made out a fit and proper case warranting injunctive relief of the kind obtained. The facts and circumstances relied on include, among other matters, the following:

   5.1. Ganeswary is guilty of inordinate and inexcusable delay. The allegations and complaints were and have been within the knowledge or means of knowledge of Ganeswary for a considerable period of time;

   5.2. the said *ex-parte* order of court seeks to con for a right of control or veto by Ganeswary when such rights or control do not exist in her favour contractually, legally or otherwise;

   5.3. the allegations made by Ganeswary in applying for the said *ex-parte* order of court are materially misleading, calculated to paint a slanted version and/or tantamount to suppression of material facts;

   5.4. the proceedings herein have not been instituted by Ganeswary for the protection of her rights or the interest of Prismatic but clearly calculated to advance an ulterior purpose which purpose is not in the interest of Prismatic as a whole,

While his application to set aside the *ex.-parte* order obtained by the petitioner on the 11 January 1992 was pending, Dr. Ramachandran by another notice of motion made *ex-parte* [enclosure (14)] obtained an order on the 29 January 1992 from the judge who had granted the said *ex-parte* order to the petitioner to stay that part of the ex parte order requiring the company and/or Dr. Ramachandran to make available to the petitioner all records and documents of the company, save and except documents which a shareholder was entitled to inspect, until the hearing and disposal of Dr. Ramachandran's application to set aside the said ex parte order, There was also to be a stay of all advertisements and/or gazetting of the proceedings including the petition until such time as the petitioner/ought formal direc-tions from the court as engaged under s. 221(2)(b) of the act.

The application by Dr. Ramachandran to set aside the said *ex-parte* order of Court obtained on the 11 January 1992 came up for hearing before me on the 27 April 1992. It was supported by his affidavit [enclosures (11)] adverted to earlier and by another affidavits [enclosure (13)] affirmed on the 28 January 1992 and filed in support of his application by notice of motion *ex-parte* to obtain a stay of the ex-parte order of Court of the 11 January 1992.

Both these affidavits of Dr. Ramachandran did not in the slightest appreciable measure meet the lengthy and substantive allegations by the petitioner in her affidavit [enclosure (2)] of mismanagement of the Company and her exclusion from involvement in its affidavit with copious exhibits further substantiating her allegations and refuting the contention of inordinate delay on her part in presenting the petition. She also telling drew attention to the fact that although Dr. Ramachandran had given notice in both his affidavits that he was giving instructions to his solicitors to finalise a substantive affidavit to answer the allegations made by the petitioners he had failed to do so.

During the course of submissions, Encik Harpal Singh, for Dr. Ramachandran, ranged far and wide and purported to make factual statements from the bar which were totally unsupported by affidavit evidence. He raised technical objections in relation to the petition which, in my view, were without merit. It was argued that the affidavit of the petitioner [enclosure (6)] filed under r. 26 of the Companies (Winding-Up) Rules 1972 ("the rules") was not in proper form and made the petition incompetent.

A comparison of the affidavit with form 7 in the rules showed that this objection was without basis. The affidavit complied substantially with r. 26 and form 7 of the rules. The deviation in form, if any, was necessitated by tailoring the form to accommodate the facts of the case and the deviation had no substantial effect and was not calculated to mislead: see s. 62 of the Interpretation Acts 1948 and 1967 ("Act 388"). Furthermore., paragraph (1) of r. 3 of the rules provides as follows:

> For the purpose of these rules the forms prescribed in the first schedule, where applicable, and where they are not applicable forms of the like character, with such variations .as circumstances may require may be used. (emphasis mine)

To insist on strict compliance with the prescribed form in the face of these provisions would be to adopt an unduly pedantic and straitjackets approach to interpretation do void of legal basis or even common sense. It was then argued that the prayers sought in the petition were outside the ambit of s. 218 of the act because the only order that the court could grant under that section was for the winding up of the Company. The petitioner here claimed that the acts of the directors of the company were oppressive to her which was in the nature of a personal complaint and brought the petition within the ambit of s. 181 of the act. This was therefore a hybrid petition purporting to be presented under two different sections of the act which could not be done: *Lai Kim Loi v Dato Lai Foo Kim and Another* [1989] 2 MLJ 290. Encik Harpal Singh contended that under s. 218 of the act the only provision that the petitioner could rely on was paragraph (f) of subsection (1), i.e. "that the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which appears to be unfair or unjust to other members".

Encik Kayveas for the petitioner, on the other hand, contended that the petitioner relied in addition on paragraph (i) of subsection (1) of s. 218 of the act, i.e. "that it is just and equitable that the Company be wound up", It was not a hybrid petition as in Lai Kim

Loi. In that case there was a writ of summons with a statement of claim indorsed and a petition to wind up the company in question. Since there were two actions there seeking substantially the same relief, the Court struck out the petition. That case was therefore distinguishable from the present case.

In my view, the petition in the present case was not a hybrid-petition. Although the various complaints directed against Dr. Ramachandran and the other directors of the company could constitute oppressive behaviour within the meaning of s. 181(1)(a) of the act, the complaints *prima facie* showed that Dr. Ramachandran and the other directors had acted in the affairs of the Company in their own interests rather than in the interests of the members as a whole, or that their actions appeared to be unfair or unjust to the petitioner as another member of the company. It is pertinent to note that as the petitioner is a 50% shareholder of the company, she would find it difficult in law to maintain a complaint of oppressive behaviour or unfair discrimination or of other prejudicial action by the other 50% shareholder of the company to bring the petition within the purview of s. 181 of the act. The facts can of course show that one 50% shareholder is acting oppressively *vis-a-vis* the other 50% shareholder but such action cannot in law enable the "oppressed", 50% shareholder to present a petition under s. 181 of the act which in law must mean the oppression or unfair discrimination of, or other prejudicial action against, the minority shareholders by the majority. A petition for winding up a company cannot be presented under s. 181 of the act where there are only two shareholders, as in the present case, with each of them holding 50% of the shares in the company. Such a petition must of necessity in law be presented under s. 218 of the act, and it would be open to the petitioner in the present case to amend the averments in the petition to reflect that position in law. Furthermore, form 2 (the format of the petition) in the rules does not require the petitioner to state categorically under which specific provision of the act the winding up of the company is sought. The pleading in the present case in rotation to the main prayer sought by the petition was not defective, Insofar as the other prayers for interlocutory injunctive relief were concerned, they need not have been included in the petition itself but such inclusion, in my view, was not fatal, When the *ex-parte* order of court of the 11 January 1992 was obtained, these prayers in the petition for interlocutory injunctive relief of the nature specified were granted, leaving only the main prayer seeking the winding up of the company under the provisions of the Act. The petition therefore was not incompetent as contended.

Encik Harpal Singh then descended upon a paragraph-by-paragraph scrutiny of the affidavit of the petitioner [enclosure (2)] in support of the petitioner's application's enclosure (3)] for orders for interlocutory injunction and for the making available of all records and documents of the company to the petitioner. However, in so doing, he attempted to attack the petition itself which, in my view, should have been made by way of motion under rule 7 of the Rules, as was done in *Lai Kim Loi*, or otherwise raised during the hearing of the petition proper.

Encik Harpal Singh then criticised the various averments in the affidavit of the petitioner and stated that she was complaining about matters relating to the affairs of the company during the period when she had been a director. She was also guilty of inordinate delay in presenting the petition as she was complaining of events which had taken place years ago.

Encik Kayveas in reply submitted that the petitioner had initially trusted Mathimugan and Dr. Ramachandran who were in a dominant position in relation to herself, Nagalingam and Jeyasingam, and it was amiss, particularly subsequently that she realised that something was amiss, particularly so when she was removed as a director

without notice and her attempts to seek clarification were rebuffed and her requisition for an extraordinary general meeting of the company to be convened was re-fused on what appeared to be a spurious ground, i.e. that most of the items for the agenda for the extraordinary general meeting were not specified whereas she had clearly stated the purpose of the meeting in her letter 16 May 1991, addressed to Dr. Ramachandran as the chairman and Vincent Paul as the secretary of the company, as follows [exhibit G25 to enclosure (2)]:

Dear Sirs

Requisition for Extraordinary

General Meeting Prismatic Sdn. Bhd.

I hereby requisition for an extraordinary general meeting of Prismatic Sdn Bhd. The object of me seeking the meeting is to:

(i) review the accounts of the company for the period 1987 to April 1991;

(ii) discuss the sale of the shares in Inmed Sdn Bhd and the manner in which the sales proceeds has been utilised to date;

(iii) review the actions, conduct and decisions of the chairman and decide in respect of such actions, conduct and decisions, as is appropriate;

(iv) remove the following persons the company:

(a) Mr. Nelson Edward Gomes

(b) Puan Christine S Nelson Edward Gomes

(c) Puan R Sathia Devi d/a S Ratnasingam

(d) Puan Srimathi Subadra Devi a/p S Ratnasingam

(v) appoint Mr. Nagalingam s/o Subramaniam as a director of the company, who has consented to be a director;

(vi) appoint one person nominated by Mr. R Mathimugan/Dr. R Ramachandran as a director of the company;

(vii) rescind the existing decisions of the board of directors as to the current signatories to bank accounts and to resolve and/or direct the board of directors to appoint new/ additional signatories to banking accounts as follows:

Group A

Dr R Ramachandran or one person nominated by Mr. R Mathimugan/Dr. Ramachandran

Group B

Puan Ganeswary d/o Ponnudurai or Mr. Nagalingam s/o Subramaniam

(viii) review the actions and performance of the present secretary and to decide on whether his appointment should be continued;

(ix) review the position of the present auditors.

Please formulate the agenda accordingly and send out the notice for the extra-ordinary general meeting,

Yours faithfully

sgd
(P. Ganeswary)

It is to be noted that of the directors of the company whose removal was intended to be sought, Nelson Edward Gomes is the brother-in-law of Mathimugan and Dr. Ramachandran, he having married their sister Christine S Nelson Edward Gomes. The latter, Sathia Devi d/o Ratnasingam and Srimathi Subadra Devi a/p Ratnasingam, whose removal as directors was also sought, are all sisters of Mathimugan and Dr. Ramachandran.

Dr. Ramachandran replied to the requisition for the extraordinary general meeting in the following manner to the petitioner by letter dated 30 May 1991 [Exhibit G26 to enclosure (2)]:

> Dear Madam
>
> I am in receipt of your letter dated 16 May 1991 requesting for an EGM of Prismatic Sdn Bhd, the company would call for a board of directors meeting to consider your request. We would inform you after the board meeting in due course.
>
> Thank you.
>
> Yours faithfully
>
> Sgd
>
> Chairman
> Prismatic Sdn Bhd

This was followed by a letter dated 6 July 1991 also signed by Dr. Ramachandran addressed to the petitioner [exhibit G29 to enclosure (2)]:

> Re: **Requisition for EGM**
>
> Dear Madam
>
> The board after a meeting on 10 June 1991 found most of your items you requested as non-specific and others as not pertaining to company matters. The board has therefore decided not to set a date unless you come with matters specific in nature.
>
> Yours faithfully
>
> Sgd
> (Dr. Ramachandran)
> Chairman
>
> PS
> Please no to the change of the new registered office of PSB.

These letters as well as other correspondence exhibited to the affidavits of the petitioner made it clear beyond preadventure that Dr. Ramachandran, purportedly acting in his capacity as chairman of the company, was refusing the reasonable requests of the petitioner as a 50% shareholder of the company not only to convene an extraordinary general meeting but also to make the accounts and other records of the company available. It was only after the petition was filed that the company submitted its accounts to the registrar of companies for the years question and paid a fine of RM2,480. In the circumstances, the petitioner was justified in seeking the interlocutory injunctive relief which she obtained by the ex-parte order 11 January 1992. She was left with no choice but to initiate these proceedings in the face of the intransigent attitude of Dr. Ramachandran and her inability to obtain access to the affairs of the company despite her numerous requests and attempts. There was no inordinate delay on the part of the. petitioner in bringing these proceedings in the circumstances, despite Encik Harpal Singh's contention to the contrary.

The contention of the petitioner that she was indeed a 50% shareholder the company and had been shut out from involvement in the affairs of the company and its management was not refuted in any way. Dr. Ramachandran's claim that the petitioner was only a 30% shareholder in the company was soundly negated by documentary evidence to the contrary in the affidavit of the petitioner [on closure (19)] which did in fact prove that she is a 50% shareholder.

In the circumstances, I found no reason whatsoever to set aside and dissolve the *ex-parte* order of court of the 11 January 1992 obtained by the petitioner and therefore produced to dismiss with costs this application by Dr. Ramachandran to set aside and dissolve that order, I also found the subsequent application by way of notice of motion *ex-parte* [enclosure (14)] made by Dr. Ramachandran to stay the *ex-parte* order of court of the 11 January 1992 to be an abuse of the process of the court: see *Permodalan MBf Sdn. Bhd. and Others Emtex Corporation Berhad and Others* [1988] 1 SCR 409. However, since the order of the other judge upon that subsequent application was of limited duration, i.e. until the disposal of the application by Dr. Ramachandran to set aside and dissolve the order of 11 January 1992 after a hearing **inter partes**, there was no need for me to make any order in respect of the order of stay granted on the subsequent application on 29 January 1992 as it became spent upon my decision.

I apologise for the delay in furnishing these grounds of judgment, which delay was partly caused by the parties taking time I was made to understand, to provide the registry of the High Court in Kuala Lumpur with copies of the relevant enclosures and authorities for onward transmission to me in Penang, to where I had been transferred. In addition, I was faced absence of secretarial assistance in Penang in respect of cases which had been disposed of in Kuala Lumpur and have had to resort finally to outside secretarial assistance in the circumstances to have these grounds of judgment prepared.